IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 252 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDULBHAI MOHMEDBHAI VOHRA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 252 of 1998

MR ASHISH M DAGLI for Petitioner No. 1

MR DC DAVE for Petitioner No. 1

MR KT DAVE, APP for Respondent No. 1

MR BP DALAL for Respondent No. 2

MR SANJAY M DOSHI for Respondent No. 3

NOTICE UNSERVED for Respondent No. 3

MR YV VAGHELA for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 25/08/2004

ORAL JUDGEMENT

1. Today, this matter is listed for final hearing. On earlier occasions, the same was listed for final hearing on several occasions. Technically speaking, today the listing of the present Cri. Rev. Application for hearing is on 99th time.

2. The present Cri. Rev. Application is preferred by the petitioner -original accused no.2 against the order dated 27.3.1998 passed by ld. JMFC, Umreth below Mark "A" & "H" in M.Criminal Case No.113/1997 while dealing with an application under Sec.451 of CrPC submitted by respondent No.2 Manojkumar Chhotabhai Pateloriginal complainant seeking custody of muddamal truck in question, whereby the ld. JMFC directed the investigating agency to hand over muddamal truck bearing Registration No. GJ-16-T-8629 to respondent no.2 herein -original complainant, resident of Amli Chakla, Umreth, Dist: Anand on his executing a Bond of Rs.5 Lakh and Personal Bond of the like amount. Other three stringent conditions are also imposed in the order under challenge wherein one of the condition is that the complainant shall not transfer or otherwise alienate the truck in question as well as he shall bring the truck before the Court as and when directed. Of course, the present petitioner had also preferred an application for custody of the said truck and under the very order under challenge, the ld. JMFC rejected the aforesaid prayer of the present petitioner.

3. It is not a matter of dispute that the consistent say of the respondent No.2 complainant is that he has purchased the truck in question through Financier through Financier Nayankumar Arvindlal Shroff and vehicle in question was under hypothecation agreement for a consideration of Rs.3.25 Lakhs with original complainant. Considering the year of complaint and date of filing of the present Cri. Rev. Application against the order passed making interim arrangement as to the custody of the vehicle in question, it is necessary to see that present Cri. Rev. Application is decided at the earliest. Appropriate directions can also be issued to the trial Court to hear and dispose of M. Criminal Case No. 113/1997, if pending.

4. Having considered the facts emerging from record and as there is no serious dispute that the vehicle in question was under hypothecation agreement with the original complainant and it was seized during investigation and that the complaint is filed by respondent no.2 -original complainant, it can legally and legitimately be held that the ld. JMFC has rightly passed order directing handing over of the custody of the

muddamal truck to respondent no.2 -original complainant.

(i) Admittedly the order is challenged qua the claim of ownership over the vehicle and rival conentions are made on the legal issues involved in the matter.

(ii) Except ld. APP Mr. Dave, for respondent No.1 State and ld. counsel Mr. BP Dalal for respondenet No.2, nobody is present. Ld. JMFC while passing the impugned order, has considered various contentions and documents including two material agreements dated 3.12.1996 and 27.3.1997 and there is a direct allegation in the complaint that accused Abdulbhai Mohammadbhai Vohra ignoring the hypothecation agreement, he sold the truck to one Paubhai Chhabildas Sindhi respondent no.2 (orig. accused No.3). Over and above these two agreements, the trial court has also considered various bills regarding the amount spent for repairing of the truck by accused no.3 Paubhai Sindhi and it has been inferred, prima facie, by the ld. JMFC that in reality the truck in question was in the custody of accused no.3 Paubhai Sindhi. Ld. JMFC has also considered the passbook of Financier Mr. Nayankumar Anilbhai Shroff and the conduct of the party for reaching the aforesaid conclusion. The order is regarding handing over/ granting custody of muddamal truck in question pending final disposal of the criminal case pending before the ld. Magistrate. In view of the nature of conditions imposed by the ld. Magistrate, I do not find any error either of law or of facts whereby it can be held that the finding recorded by the ld. Magistrate is perverse or patently illegal. There is no element of material error or miscarriage either. It is always open for the accused to claim the property on termination of the trial when the Court is supposed to pass the legal orders as to the disposal of muddamal under Sec.452 of CrPC.

5. In view of above, there is no substance in the present Cri. Rev. Application and the same is hereby dismissed. The impugned order passed by ld. Magistrate is hereby confirmed. However, ld. Magistrate is directed to hear and dispose of M.Criminal Case No.113/1997, if pending before the Court, expeditiously. Rule is discharged. Interim relief, if any, stands vacated.

Direct Service is permitted.

[C.K. BUCH, J]

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